

# EXHIBIT 101

Page 1

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF NEW YORK  
3                   Case No.: 1:21-cv-7955-LAK  
4                   and Consolidated Cases 21-cv-7957-LAK  
5                   and 21-cv-7959-LAK

-----x

6                   MARVEL CHARACTERS, INC.,  
7                   Plaintiff and Counterclaim-Defendant  
8                   v.  
9                   LAWRENCE D. LIEBER,  
10                  Defendant and Counterclaimant.

-----x

11                  MARVEL CHARACTERS, INC.,  
12                  Plaintiff and Counterclaim-Defendant,  
13                  v.  
14                  KEITH A. DETTWILER, in his capacity as  
15                  Executor of the Estate of Donald L. Heck,  
16                  Defendant and Counterclaimant.

-----x

17                  MARVEL CHARACTERS, INC.,  
18                  Plaintiff and Counterclaim-Defendant,  
19                  v.  
20                  PATRICK S. DITKO, in his capacity as  
21                  Administrator of the Estate of Stephen J.  
22                  Ditko,  
23                  Defendant and Counterclaimant.

-----x

24                  VIDEO DEPOSITION OF ROY WILLIAM THOMAS, JR.  
25                  January 20, 2023  
                      8:49 a.m.  
                      Charlotte, North Carolina

Page 2

1 ROY WILLIAM THOMAS, JR., pursuant to Federal Rule of  
2 Civil Procedure 30, held at the offices of Nelson Mullins  
3 Riley & Scarborough in the Foster Conference Room A, located  
4 at 301 South College Street, One Wells Fargo Center, 23rd  
5 Floor, Charlotte, North Carolina 28202, before  
6 Audra Smith, a realtime court reporter and  
7 a Notary Public of the State of North Carolina.

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2 A P P E A R A N C E S :

3

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18 JAYMIE PARKKINEN, ESQ. (Via Zoom)

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21 ALSO PRESENT:

22 DAVID COOPER, Videographer

23 ELI BARD, Marvel Entertainment, (Via Zoom)

24 Alec Lipkind, The Walt Disney Company, (Via Zoom)

25

1       little thing he did once, and actually crossing out  
2       a panel or two on the original art, which made the  
3       Art Director John Verpoorten look at me in horror  
4       because I didn't usually do that because I had so  
5       much respect for him. But that was an exception.  
6       Gene's work was so good and the things that he did,  
7       if he didn't do it right the first time, he wasn't  
8       going to be able to improve it, you know, by doing  
9       something else and no one else was going to, so you  
10       just accepted it was just a page. There may have  
11       been occasional things.

12                   Martin Goodman either rejected or at  
13                   least expressed extreme displeasure at one of his  
14                   covers, a Doctor Strange. Sent back a message, "I  
15                   don't know what the hell's going on in this cover,"  
16                   and he was kind of right.

17                   Q        Other than those two examples, the one  
18                   panel or two that you crossed out and the one cover  
19                   that may or may not have been rejected by Martin  
20                   Goodman, do you have any recollection of Gene  
21                   Colan's other artwork for Marvel during the relevant  
22                   period being rejected?

23                   A        He probably had -- you know, all artists  
24                   would have some page they had to redo over from time  
25                   to time, but it would not have been exceptional with

1 Gene.

2 Q And if Marvel had to keep rejecting or  
3 sending back pages to artists, would that artist,  
4 based on your experience, continue to get regular  
5 assignments from Marvel?

6 A Probably not, if you had to do it too  
7 much. The person with our deadlines and so forth  
8 would just have been too much trouble. By the time  
9 they got to the status that Gene was at, you know,  
10 you knew their work, and we'd have an occasional  
11 problem with the writing or the order with any book,  
12 but you basically knew what you were going to get  
13 from Gene, except for an occasional drawing or an  
14 occasional page.

15 And I worked with him, as I said, for a  
16 year or more on Daredevil, and I don't have --  
17 except for this one panel or something I crossed out  
18 and might have had him or somebody else redo, I have  
19 no memory of ever, you know, rejecting or trying to  
20 get Stan to reject, you know, a page of his. There  
21 may have been one or two, but it wasn't very much.

22 Q Okay. And you say that you worked with  
23 Gene Colan for a year on Daredevil. What year was  
24 that?

25 A I'm not sure. It was at --

1                   Q        Okay. And so let's say even before the  
2       expansion in the early '70s when Marvel was doing  
3       eight or so superhero comics, how many -- do you  
4       have an understanding of approximately how many  
5       pages, for example, a regular artist like Gene Colan  
6       might be doing per month?

7                   A        Different artists had considerably  
8       different rates because of the amount they could  
9       pencil. Gene -- I understood, both by comics, to be  
10       fairly fast and probably working long hours, it -- I  
11       got the impression that on the days he worked, he  
12       would do a couple pages, maybe three. He was one of  
13       the -- considered one of the faster and more  
14       productive artists.

15                  Q        Okay. Let's go ahead and look back at  
16       Exhibit 62, which we've already looked at. And if  
17       we turn to page -- the last three digits are 306.

18                  A        Yes, I have it here.

19                  Q        You're there. Okay great.

20                         And do you see there where you're  
21       discussing how Gene often -- Gene Colan often ran  
22       out of room; do you see that?

23                  A        Yes. It's probably an exaggeration to  
24       say "often," but he did have that problem from time  
25       to time, yes.

1 Q And what do you mean by that? Can you  
2 explain?

3                   A     Yes. Stan did a plot, whether it was at  
4                   the beginning, being written still when I first came  
5                   there, and later mostly over the phone that Gene  
6                   would record. But he would -- they would -- he  
7                   would discuss the points, and they'd go back and  
8                   forth, and mostly Stan would plot it. But they  
9                   would talk it over, and then he'd -- so then Gene  
10                  had something to write [sic]. And in the beginning,  
11                  as I said, it was -- I mean "to draw," in the  
12                  beginning it was all written out.

13                   But the problem was that Gene had a  
14                   tendency to start working on stories without  
15                   bothering to read the whole plot so that -- and he  
16                   liked drawing big panels, and he like to express --  
17                   and he had so much fun doing it and he had his own  
18                   particular style that, on several occasions, he  
19                   would suddenly get to a certain point, and Stan  
20                   would see the early pages. I remember one  
21                   conversation over the phone, I was in the room at  
22                   the time, and Stan said, "Gene," he said, you know,  
23                   "I can see these pages, and they're great," but he  
24                   said, you know, "you got a big panel of a whole-page  
25                   drawing of Spider-Man -- I mean of Iron Man and this

1 and that." He said, "You're going to run out of  
 2 room. What about this stuff that comes in the last,  
 3 you know, half of the story, and you only have four,  
 4 five, six pages left of the 12 pages?"

5 And Gene said, "Well, I haven't read that  
 6 far yet. You know, I hadn't got that far in the  
 7 plot." He was obviously drawing it without reading  
 8 the whole story.

9 As a result, that story had to suddenly  
 10 crowd a whole scene with a rocket and the explosion  
 11 and all sorts of thing into a page or two that  
 12 really needed several times that length.

13 And in that case, Stan did it because he  
 14 could kind of make it work, but he was kind of, you  
 15 know, unhappy with the pacing. But he gave Gene a  
 16 lot of room because the readers liked it, Stan loved  
 17 his work, and in general, you just kept trying to  
 18 get him to pay a little more attention to the  
 19 pacing.

20 Q Okay. Let's go ahead and mark as 75,  
 21 Tales of Suspense Volume 1, Number 86.

22 (Exhibit Number 75, Comic: Tales of  
 23 Suspense Featuring Iron Man and Captain  
 24 America, Volume 1, Number 86, no Bates, was  
 25 identified.)

1       it would refer to the pencil artist as kind of a  
2       sloppier, shorthand usage because that was the  
3       primary artist, but it really meant "the penciler,"  
4       generally speaking.

5           Q       And --

6           A       We would say the artist, as opposed to  
7       the inker, but that wasn't -- that was just  
8       imprecise terminology is what we did.

9           Q       And once the pencil artist finished  
10      drawing out the plot, what was the next step in the  
11      process?

12          A       For him to get it into the office, or to  
13      the writer by whatever method we were doing.

14          Q       And what happened at that point?

15          A       The writer took it and wrote the dialogue  
16      and the captions and indicated the balloons on  
17      the -- at that time, on the original art as well.

18          Q       And what if the writer on the comic was  
19      not Stan Lee, was Stan Lee involved at all at this  
20      stage?

21          A       Yes. His -- he was the editor. His name  
22      was always on there as editor, or later, you know,  
23      "Presents..." or something, but it always indicated  
24      he was the editor. He was always the ultimate  
25      authority unless Martin Goodman stepped in, and that

1                   **was mostly on covers.**

2                   Q         And other than having his name actually  
3                   listed as the editor on the comics, would Stan Lee,  
4                   for example, review the artwork when it came in?

5                   A         Yes. Stan really liked to review the --  
6                   he really liked to look at the artwork, even if he  
7                   wasn't going to write the comic. At first he felt  
8                   he should. That was his duty. He wanted to make  
9                   sure. He didn't have faith -- total faith in me or  
10                   anybody else. And -- so he would review all of it.  
11                   There might be something that got slipped by him  
12                   once in a while, but that was -- but in general,  
13                   that was his practice, yes.

14                   Q         And what was your understanding of why  
15                   Stan Lee reviewed the artwork?

16                   A         Well, he was the editor, so it was his  
17                   job to supervise. If something went wrong, the  
18                   publisher wasn't going to blame -- go to the artist,  
19                   he was going to go to Stan Lee, not me or his  
20                   artist.

21                   And secondly, he felt that, you know,  
22                   he -- that both over the years, and in particular in  
23                   recent years since Marvel got started, he felt he  
24                   had a particular expertise, you know, over -- you  
25                   know, over knowing what the book should look like

1           A       Yes.  Yes.  Including that, now it's  
2       five.

3           Q       Including today it's five, yes.

4                   Approximately over how many years did  
5       those five depositions occur?

6           A       Well, 35 or 40.  Because the first one  
7       was in -- sometime in the early -- middle '80s in  
8       Los Angeles.  So it's at least 35, 40 years.

9           Q       Okay.  And Mr. Toberoff also asked you a  
10      number of questions suggesting or inquiring whether  
11      Marvel is in any way compensating you for your  
12      testimony today.  Do you recall that?

13                   MR. TOBEROFF:  Object to form.

14           A       Yes.

15                   BY MS. LENS:

16           Q       And, Mr. Thomas, has any work that you've  
17      done for Marvel over the years been tied in any way  
18      to testimony that you may have provided in any  
19      litigation?

20                   MR. TOBEROFF:  Object to form.

21           A       Not even the slightest, you know, hint.

22                   BY MS. LENS:

23           Q       And Mr. Toberoff also asked you about the  
24      incentive payments that you testified that Marvel  
25      provides to you on a discretionary basis.  Do you

1 recall that?

2 A Yes.

3 Q Okay. And do those incentive payments,  
4 to your understanding, have any connection to either  
5 this lawsuit or any of the testimony that you've  
6 previously provided during depositions?

7 MR. TOBEROFF: Object to the form.

8 A No. They've been going on for the last  
9 maybe three decades or so as Marvel's republishing.  
10 And it's always been kind of, you know, steady  
11 depending upon what they publish. It has nothing to  
12 do with anything I do, whether I'm writing for the  
13 company or not writing for the company or doing  
14 whatever.

15 BY MS. LENS:

16 Q And to your understanding, your -- well,  
17 strike that.

18 Let's talk about the character agreement  
19 that Mr. Toberoff asked you about. To your  
20 understanding, is that character agreement related  
21 in any way to testimony that you may provide in any  
22 litigations involving Marvel?

23 A No. It has no connection to anything  
24 other than work that I did for the company over the  
25 last few decades since '65.

1 Q Mr. Thomas, do you have any reason to  
2 believe that the system or method for creating  
3 comics at Marvel in the 1960s, prior to you joining  
4 in 1965, differed from that in place when you joined  
5 in '65?

6 MR. TOBEROFF: Objection as to form.  
7 Calls for speculation.

8 A Well, you know, I could tell from  
9 conversations with Stan, with Sol, with various  
10 artists at various times that it had evolved  
11 somewhat obviously from the early '60s. Certainly  
12 by the time I was there in '65, it had pretty much  
13 come into its basic form, and I just -- you know, I  
14 just kind of worked with it and inherited the form  
15 as it already existed.

16 BY MS. LENS:

17 Q Did anyone tell you, when you joined in  
18 1965, that the system for creating comics was new or  
19 different from that used in, say, 1962, '63, and  
20 '64?

21 MR. TOBEROFF: Objection as to form.  
22 Compound.

23 A I never got any indication that it was  
24 different. It was still the same -- mostly the same  
25 people, even.

1 BY MS. LENS:

2 Q So no one told you, for example, that in  
3 1962 freelance writers weren't working under the  
4 supervision of Stan Lee?

5 MR. TOBEROFF: Leading. Objection as to  
6 form.

7 BY MS. LENS:

8 Q Let me restate that.  
9 Did anyone tell you, when you joined  
10 Marvel in 1965, that previously in the 1960s that  
11 freelance writers weren't working under the --  
12 freelance artists weren't working under the  
13 supervision of Stan Lee?

14 MR. TOBEROFF: Objection as to form.  
15 Leading. Compound.

16 A No one told me that there had been, you  
17 know, any changes. And Stan had been the editor  
18 during that entire period. The artists and other  
19 writers, if there had been any, they all reported to  
20 Stan. And it seemed like that had been the way it  
21 had been for at least the last several years.

22 BY MS. LENS:

23 Q Did anyone tell you, when you joined  
24 Marvel in 1965, that freelancers didn't work on a  
25 per-page rate in the 1960s before you joined?

1 MR. TOBEROFF: Objection as to form.  
2 A As far as I knew or was informed, it had  
3 always been a paid -- a page rate kind of system for  
4 writers and for artists.

5 BY MS. LENS:

6 Q And did anyone tell you before -- strike  
7 that.

8 Did anyone tell you, when you joined  
9 Marvel in 1965, that prior to that, that freelance  
10 artists didn't work pursuant to deadlines provided  
11 by Marvel?

12 MR. TOBEROFF: Objection as to form.

13                   A        No.    No, they didn't.   Obviously there  
14                   always had to be deadlines.   There were deadlines  
15                   all the way back to the '30s and the '40s, and that  
16                   part of it really had never changed.

17 BY MS. LENS:

18 Q Did anyone tell you, when you joined  
19 Marvel in 1965, that prior to that, that Marvel  
20 didn't have the right to require freelancers to do  
21 revisions at Marvel's request?

22 MR. TOBEROFF: Objection as to form.

23 Vague.

24 A No, no one ever told me that.

1 BY MS. LENS:

2 Q Do you have any reason to believe that  
3 that was the case?

4 MR. TOBEROFF: Same objection.

5 A No. Quite the contrary.

6 MS. LENS: Okay. No further questions.

7 Of course if Mr. Toberoff asks any questions in  
8 his remaining minute, I'll reserve the balance  
9 of my time for redirect.

10 MR. TOBEROFF: I'm starting my stopwatch  
11 over.

12 FURTHER EXAMINATION

13 BY MR. TOBEROFF:

14 Q When Stan had meetings with freelance  
15 writers and artists during the period, were you  
16 generally in those meetings?

17 MS. LENS: Objection to form.

18 A I wouldn't say generally but sometimes.

19 BY MR. TOBEROFF:

20 Q What percentage of the times?

21 MS. LENS: Objection. Lacks foundation.

22 A Just a few percent. Five, ten. Rather  
23 small numbers. There would usually be some  
24 particular reason why he wanted me there, to take  
25 notes or whatever.

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## I N D E X

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| ROY THOMAS, JR.                     | PAGE |
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| Further Examination by Ms. Lens     | 328  |
| Further Examination by Mr. Toberoff | 334  |

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| Exhibit 62 | AlterEgo magazine article, Rascally Roy Celebrates 40 Years Since Modeling with Millie No. 44, and a few More Marvel Milestones! |      |
|            | 2021MARVEL-71288 to 71402  | 93   |
| Exhibit 63 | The Jack Kirby Collector, 2021MARVEL-0070540 to 70607  | 175  |
| Exhibit 64 | Magazine, Comic Book Artist, 2021MARVEL-0036207 to 36236   | 176  |
| Exhibit 65 | AlterEgo magazine, "Roy Thomas on Marvel in the 1970s!", 2021MARVEL-74335 to 74438   | 45   |
| Exhibit 66 | 10/26/10 Vol. 1 Deposition of Roy Thomas, 2021MARVEL-0043115 to 43320  | 171  |
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| Exhibit 68      | 4/12/11 Deposition of Roy Thomas<br>2021MARVEL-0041265 to 41434  | 172  |
| Exhibit 69      | 4/13/11 Deposition of Roy Thomas<br>2021MARVEL-0123147 to 123387   | 173  |
| Exhibit 70      | Trial, 10/13/99,<br>2021MARVEL-0081102 to 81239  | 174  |
| Exhibit 71      | Employment Contracts & Correspondence<br>from Roy Thomas, Confidential, 9/1/74,<br>Bates 2021MARVEL-88673 to 88680                             | 51   |
| Exhibit 72      | Comic: Tales of Suspense, "The Crimson<br>Dynamo strikes again! And none,<br>but Iron Man can hope to stop him!"<br>2021MARVEL-0005039 to 5052 | 76   |
| Exhibit 73      | Marvel Comics Group Notepad note from<br>Roy to Jerry with comic samples,<br>2021MARVEL-0050273 to 50278                                       | 84   |
| Exhibit 74      | Comic: Marvel Super-Heroes Featuring<br>Captain Marvel, 2021MARVEL-3353 to<br>3368   | 98   |
| Exhibit 75      | Comic: Tales of Suspense Featuring<br>Iron Man and Captain America<br>Number 86, no Bates  | 114  |

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| E X H I B I T S |            |   |      |
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| 1               | Exhibit 76 | Comic: The Avengers, Number 39,<br>2021MARVEL-0001682 to 1702   | 163  |
| 2               | Exhibit 77 | Plot: The Avengers vs. Sub-Mariner<br>(#40), 2021MARVEL-0071516 to 71578                                  | 166  |
| 3               | Exhibit 78 | Plot: Avengers v. Super-Adaptoid,<br>2021MARVEL-0071592 to 71594  | 167  |
| 4               | Exhibit 79 | Comic: The Avengers Number 45,<br>2021MARVEL-0001724 to 1744  | 169  |
| 5               | Exhibit 80 | Subpoena for Roy Thomas   | 199  |
| 6               | Exhibit 81 | Responses and Objections to<br>Subpoena to Produce Documents,<br>Information, or Objects to Roy<br>Thomas | 211  |
| 7               | Exhibit 82 | Drawing with envelope to Patrick<br>Ditko   | 303  |
| 8               | Exhibit 83 | Hero Initiative article, no Bates   | 326  |
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| PREVIOUSLY MARKED EXHIBITS |  |      |
|----------------------------|--|------|
| NUMBER                     | DESCRIPTION  | PAGE |
| Exhibit 3                  | AlterEgo magazine article,<br>Conversation with Larry Lieber,<br>2021MARVEL-0027468 to 27481 | 67   |
| Exhibit 8                  | Article: Special Stan Lee 85th<br>Birthday Issue, 2012MARVEL-0073287 to<br>73370             | 156  |
| Exhibit 28                 | Comic: The Fantastic Four,<br>2021MARVEL-0023907 to 23908                                    | 169  |
| Exhibit 31                 | Avengers Plot, 2021MARVEL-71572  | 161  |

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1 REQUESTS FOR MARKED PORTIONS OF TRANSCRIPT

2 PAGE/LINE DESCRIPTION

3 185/8 Question by Toberoff: Did you ask Marvel's  
4 attorneys to represent you in this case?  
5 188/14 Question by Toberoff: Did Marvel's attorneys tell  
6 you why they were suggesting that they represent  
7 you?  
8 190/2 Question by Toberoff: And what did they tell you?  
9 218/13 Question by Toberoff: What was -- at  
10 that meeting, what was said to you by Marvel's  
11 attorneys?

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1 STATE OF NORTH CAROLINA )

2 COUNTY OF FORSYTH )

3 REPORTER'S CERTIFICATE

4 I, Audra Smith in and for the above county  
5 and state, certify that the person hereinbefore named was  
6 taken before me at the time and place and was sworn by me and  
7 that such deposition is a true record of the testimony given  
8 by such witness.

9 I further certify that I am not related to  
10 any of the parties to this action by blood or marriage and  
11 that I am in no way interested in the outcome of this matter.

12 IN WITNESS WHEREOF, I have hereto set my  
13 hand this 6th day of February, 2023.

14

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16

17

Audra Smith

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Notary Number: 201329000033

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Commission Expires: June 26, 2025

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